



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPF
FAX: (617) 727-6549

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MEMORANDUM

To: Interested Parties
From: Michael J. Sullivan, Director *mjs*
Subject: Contributions to Political Committees by Credit or Debit Card

M.G.L. c. 55, § 9 authorizes candidates and political committees to accept contributions by credit or debit¹ card where the transaction results in “a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder.” OCPF promulgated regulations at 970 CMR 1.09 to govern the receipt of credit or debit card contributions. This memorandum is intended to explain these regulations in more detail. Candidates and committees that intend to accept credit or debit card contributions should also read 970 CMR 1.09, which may be accessed from the “Legal Guidance” page of OCPF’s website, www.mass.gov/ocpf.

I. AUTHORIZED TRANSACTIONS

A. VIA INTERNET OR SIGNED AUTHORIZATION

As the above-quoted language of M.G.L. c. 55, § 9 suggests, in order to make a contribution by credit or debit card, a contributor must first authorize the transaction either on the Internet or by way of a signed paper record as described below. Therefore, permissible transactions are limited to (1) face-to-face transactions where, in the presence of a candidate, committee member or agent thereof, a cardholder-contributor signs a credit or debit card receipt, or an authorization to charge his or her credit or debit card; (2) transactions where the cardholder-contributor provides credit or debit card information and a signed authorization by mail to a candidate or committee; and (3) Internet transactions that comply with 970 CMR 1.09(2). A candidate or committee may not process a credit or debit card transaction based solely on a verbal authorization by the contributor-cardholder, such as over the telephone or via e-mail. See 970 CMR 1.09(3) & (4).

¹ The campaign finance law was recently amended to allow contributions to be made by debit card. See Chapter 136 of the Acts of 2006.



B. DUTY TO ENSURE COMPLIANCE

Candidates and committees must review all credit and debit card contributions received to determine that the contributions comply with the source and limitation requirements of the campaign finance law. Any contribution determined to be illegal, including excess contributions, must be refunded to the contributor in accordance with 970 CMR 1.04(8).²

II. CONTRIBUTIONS WIRE TRANSFER

Pursuant to M.G.L. c. 55, § 9, contributions from any individual that exceed \$50, including any previous contributions made by that individual during the year, must be paid by personal check or other “written instrument.” A “written instrument” is “a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account [that] ... contains the contributor’s funds ... [or] for contributions by credit or debit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder.” The term “written instrument” does not include electronic fund transfers.³ See M.G.L. c. 55, § 9. Currently, there is no authority in the campaign finance law to allow candidates or committees to accept contributions via wire transfer, unless expressly authorized by Section 9A.

III. INTERNET TRANSACTIONS

A. CONTRACTING WITH VENDOR OR MERCHANT PROVIDER

Where a candidate or committee contracts with a vendor or merchant provider,⁴ such as a bank, to process credit or debit card contributions on the candidate’s or committee’s behalf, such a contract must conform to the campaign finance regulations at 970 CMR 1.09(2)(a). This provision requires that the contract be consistent with the vendor’s customary and usual business practices, and not provide any discount that is not available to other candidates or political committee or the general public. In addition, the candidate or committee must be responsible for paying its portion of the fees required by the merchant provider or vendor. See 970 CMR 1.09(2)(a)1-3.

B. CONTENT OF WEBSITES THAT SOLICIT CREDIT CARD CONTRIBUTIONS

The campaign finance regulations at 970 CMR 1.09(2)(b) set forth the criteria for web sites that solicit political contributions by credit or debit card. Specifically, the sites

² 970 CMR 1.04(8) states, in relevant part, “Any contribution which is believed by a candidate or committee to be illegal, subsequent to its deposit, shall be refunded to the contributor immediately. This refund shall be in the form of a check written to the contributor on the account of the candidate or political committee into which the original contribution was deposited.”

³ It should be noted that, notwithstanding the definition of “written instrument,” M.G.L. c. 55, § 9A authorizes certain contributions by individuals to political action committees via wire transfer or electronic funds transfer, such as payroll deductions.

⁴ A “merchant provider” is a bank or other business authorized to process credit or debit card transactions. A “vendor” is an individual or entity other than a merchant provider that provides services for campaign fundraising on the Internet to candidates and political committees. See 970 CMR 1.09(1).

must: (1) set forth appropriate questions, which require an affirmative response from a contributor, to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; (2) clearly identify the name of the candidate or committee involved in the solicitation; (3) require a contributor to certify with an affirmative action that the contributor is responsible for making payments on the credit or debit card and that the contributor's personal funds will be the true source of the contribution as required by M.G.L. c. 55, § 10; and (4) clearly distinguish between required and optional information collected.

C. TRANSACTION CONFIRMATIONS

Internet credit or debit card contributions must be promptly confirmed in writing via e-mail by the recipient candidate or committee, or by regular mail if the contributor does not provide an e-mail address. See 970 CMR 1.09(2)(c).

D. SPECIAL ISSUES REGARDING PAYPAL⁵

Paypal.com is a website that offers individual consumers who register on the site the option to securely send funds, at no cost, from an existing credit card, debit card, or bank account to anyone with an e-mail address. Paypal acts like an intermediary by charging or debiting the credit card or bank account designated by the payor and notifying the payee via e-mail that they have received a payment.

Although Paypal provides political committees that receive credit or debit card contributions with some of the information that committees must maintain, i.e., the name of the contributor, the amount of the contribution and the fee collected by Paypal, other information, which also must be maintained by a committee, is not provided. Paypal provides customers with the address associated with the credit or debit card (which may or may not be the contributor's residential address). Paypal does not, however, give customers the employer and occupation of a contributor, nor does it provide the credit or debit card number or expiration date. Committees must maintain all of these items. See 970 CMR 1.09(5)(a). Also, Paypal does not screen contributions to ensure compliance with the campaign finance law, e.g., by requiring contributors to certify that the contributor is responsible for paying all charges incurred in using the credit card and that the contributor's personal funds will be the true source of the contribution. See 970 CMR 1.09(2)(b). Therefore, political committees that use Paypal must also use their own website to screen contributions and obtain the required information before allowing a contributor to proceed to the Paypal page to actually make a contribution.

In order to receive a payment using Paypal, the recipient must register as a member of Paypal by establishing either a "Business," or "Premier" account. According to information on Paypal.com, members with "Business" or "Premier" accounts may receive payments derived from a payor's credit or debit card or bank account. Paypal charges a fee, however, to process such transactions. Therefore, only those who open a

⁵ This discussion, although focusing on Paypal, also applies to credit or debit card contributions received using other merchant providers or vendors, if the merchant provider or vendor does not provide committees with the information or screening required by the regulations.

“Premier” or “Business” account and agree to Paypal’s fee schedule are eligible to receive credit or debit card payments. Under the campaign finance law, however, committees may not receive contributions from a contributor’s bank account (using the contributor’s bank account number rather than a debit card) via the Paypal automated clearing house.

It is this Office’s understanding that certain candidates and committees have established campaign websites that have utilized Paypal to process credit card contributions from that site. It would appear consistent with the campaign finance law for candidates and committees to utilize Paypal as a merchant provider to accept Internet credit (or debit) card contributions in this manner, as long as the provisions of 970 CMR 1.09(2), regarding any merchant contract, the website’s content and written transaction confirmations, are otherwise met.

On the other hand, it would not be consistent with the Massachusetts campaign finance law or regulations to utilize Paypal: (1) to receive funds directly from Paypal.com, which does not conform to 970 CMR 1.09(2)(b), or (2) to receive funds from any source other than a credit or debit card, such as from a bank account, contrary to M.G.L. c. 55, § 9 (See Section III, above), even if the website through which the contribution is made otherwise complies with the applicable regulations. Under no circumstances should a Massachusetts candidate or political committee, even those with registered “Premier” or “Business” accounts, accept these types of contributions through Paypal. As with any illegal contribution, such contributions, as noted above, must immediately be refunded to the contributor in accordance with 970 CMR 1.04(8).

D. SOLICITATIONS ON MULTIPLE SITES

There is nothing in the campaign finance law, M.G.L. c. 55, to preclude a candidate’s or committee’s merchant provider or vendor from accepting credit or debit card contributions on behalf of the candidate or committee via multiple websites, as long the content of each of the websites conforms to 970 CMR 1.09(2). For example, subject to the appropriate regulations, candidates and committees may, in addition to their own websites, receive Internet credit or debit card contributions solicited on their behalf by an independent website created and maintained by unpaid volunteers. See AO-04-11.

IV. RECORD KEEPING

Besides M.G.L. c. 55, §§ 2 and 5, and 970 CMR 1.10, the record keeping provisions of the campaign finance statute and regulations that are applicable to all political contributions, the campaign finance regulation at 970 CMR 1.09(5)(a) imposes certain additional requirements in regard to Internet credit and debit card contributions. Specifically, this regulation requires electronic (where applicable) and paper records of credit and debit card contributions, which include the following:

- (1) the name and residential address of the contributor;
- (2) the date received and amount of the contribution;
- (3) the occupation and employer of the contributor if the annual aggregate contribution(s) from the individual is equal to or greater than \$200;

- (4) any costs or fees deducted by or paid to the vendor or the merchant provider;
and
- (5) the contributor's billing address, if it is different from his or her mailing address.

In addition, the contributor's credit or debit card number and expiration date must be maintained either by the candidate or committee, or by a vendor or merchant provider on behalf of the candidate or committee pursuant to a written agreement. See 970 CMR 1.09(5)(b).

As discussed below, candidates and committees, to ensure accurate disclosure of contributions actually received, must obtain information from their merchant provider or vendor and reconcile the information to information provided by the committee's bank.

V. REPORTING

A. REPORTING CONTRIBUTIONS AND FEES

A credit or debit card contribution is deemed "received" for the purpose of the campaign finance law on the day that the contribution is transmitted to the candidate's merchant provider or vendor by the cardholder's bank. See 970 CMR 1.09(5)(b). Also, the amount of the contribution reported and attributed to the individual contributor is the gross amount provided by the contributor, even where a vendor or merchant provider deducts a transaction fee prior to depositing the proceeds of the contribution into the candidate or committee's account. See 970 CMR 1.09(5)(c).

All credit and debit card fees are reportable "expenditures" by the candidate or committee for the purposes of the campaign finance law, even if the fee is directly deducted by the vendor or merchant provider prior to deposit in the committee account. See 970 CMR 1.09(5)(c).

B. DISCLOSURE BY NON-DEPOSITORY CANDIDATES AND COMMITTEES

As with any monetary contribution, non-depository candidates and committees are required to report (gross) credit and debit card contributions on Schedule A of the relevant campaign finance reports, including, where applicable, all information required by M.G.L. c. 55, § 18, such as the contributor's name and residential address, or occupation and employer. Likewise, all fees and costs paid by a candidate or committee in conjunction with the solicitation and receipt of credit and debit card contributions are reported on Schedule B of the relevant campaign finance report. This includes all flat fees and per transaction fees, whether or not the fee is paid separately by the committee or is deducted from the proceeds of funds received by the vendor or merchant provider, i.e. netted out of the contributions.

For example, if an individual makes a \$100 credit or debit card contribution to a candidate's committee on the Internet, the committee should disclose a \$100 receipt on Schedule A of the relevant campaign finance report from that individual, even if the

committee's merchant provider deducted its fee, say 3%, and only deposited \$97 from that individual into the committee's account. The committee would reflect the \$3 fee as an expenditure made payable to the merchant provider on Schedule B of the same report.

Committees that receive credit card or debit card contributions must obtain information from the vendor or merchant provider reflecting credit and debit card contributions that have been processed by the vendor or merchant provider. The merchant provider or vendor itemizes actual deposits made to the committee's account, and lists all contributions that cleared or were declined by the issuing bank. After receiving this information from the merchant provider or vendor, the committee must reconcile it to the information provided by the committee's bank regarding actual deposits. This will allow the committee to ensure the accuracy of its campaign finance reports. See 970 CMR 1.09(5)(e) and (f). The committee must also obtain information from contributors, including their residential address and, for persons contributing \$200 or more in a calendar year, their employer and occupation. See 970 CMR 1.09(5)(a).

C. DISCLOSURE BY DEPOSITORY CANDIDATES AND COMMITTEES

Depository candidates and committees are responsible for reporting credit and debit card contribution activity directly with OCPF. This is done by filing CPF Form D106 reports in accordance with the same reporting schedule applicable to depository banks: on the fifth day of each month, complete as of the first day of that month and, during the last six months of an election year, on the 20th day of each month complete as of the 15th day of that month. Depository candidates and committees that receive contributions by credit or debit card, like other candidates and committees that receive such contributions, must obtain information from their merchant provider or vendor and reconcile the information to information provided by the committee's bank, and from the contributor. (See discussion in Part V(B), above, and 970 CMR 1.09(6)(d)). *The reconciliation must take place prior to filing each Form D106.*

Fees and costs incurred in conjunction with the receipt of credit and debit card contributions that are paid using a depository check will be disclosed by the depository bank as with any other expenditure. The same holds true for any fees directly debited from a candidate's or committee's account by a vendor or merchant provider. Please note, however, that a candidate or committee may need to amend a bank report that reflects a fee paid to a vendor or merchant provider in a manner other than by a depository check, such as one directly debited from the committee's account, in order to explain the purpose of the expenditure.

In contrast, candidates and committees must report credit and debit card processing fees in instances where the vendor or merchant deducts the fee from the proceeds of a contribution(s) received prior to depositing the funds in the depository account. This is necessary because the amount of the (gross) contribution reported on the D 106 report will vary from the (net) amount actually deposited in the depository account. A candidate or committee accounts for this variance and discloses the fee(s) by making an adjustment on the D 106 so that the amount of the deposit listed on the report accurately

reflects the money received by the bank. The adjustment is made by calculating the aggregate amount of the fee(s) deducted by a vendor or merchant provider during the reporting period and then “subtracting” this amount from the sum of the gross receipts.

For candidates and committees that file paper reports with OCPF, the subtraction should be done manually at the end of the D 106 report. Candidates and committees that e-file accomplish the adjustment by using the vendor or merchant’s name and address to enter a negative “receipt” in the Reporter software in the amount of the aggregate fees. When the relevant D 106 report is created, OCPF’s software will automatically subtract the amount of the negative figure from the sum of the contributions reported. All candidates and committees should identify the purpose of the adjustment as a payment for credit and debit card processing fees.

For an example, please see the attached sample D 106 report, which involves of three contributions totaling \$250 (\$100, \$100, and \$50). Assuming that the committee’s merchant bank deducted its 3% fee prior to depositing these amounts, only \$242.50 would actually have been received by the depository bank. To account for this, a negative receipt of \$7.50 (\$3, \$3, and \$1.50) was added to the deposit report created by the committee using OCPF’s Reporter software.

Any candidates or committees who have additional questions regarding credit or debit card contributions after reviewing the attached regulations should contact OCPF for further guidance.

Candidate Name: _____

Committee Name: _____

Name of Bank: _____

Deposit Sequence: _____ 11-10-2004-04

Deposit Date: **11/10/2004**Page #: **1 of 1**

<u>Payment Form</u>	<u>Name & Address</u>	<u>Amount</u>
OTHER		(\$7.50)
CREDIT CARD	Black, Mary 44 Phillips Street Boston, MA 02114	\$100.00
CREDIT CARD	Doe, John 250 Garden Street Boston, MA 02114	\$100.00
CREDIT CARD	Smith, Robert 384 Myrtle Street Boston, MA 02114	\$50.00

Total this page:

\$242.50

Contributions itemized this deposit:

Contributions not itemized this deposit:

\$0.00

Total Deposit (sum of all pages):

\$0.00